

permit situation following a consideration of whether the violation being resolved was knowing or intentional and other indications of the need for a penalty. For example, where an unauthorized fill meets the terms and conditions of NWP 13, the DE can consider the appropriateness of allowing the residual fill to remain, in situations where said fill would normally have been permitted under NWP 13. A knowing, intentional, willful violation should be the subject of an enforcement action leading to a penalty, rather than an after-the-fact authorization. Use of after-the-fact NWP authorization must be consistent with the terms of the Army/EPA Memorandum of Agreement on Enforcement. Copies are available from each district engineer.

PART 331—ADMINISTRATIVE APPEAL PROCESS

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APPENDIX A—ADMINISTRATIVE APPEAL PROCESS.

APPENDIX B—APPLICANT OPTIONS WITH PROFFERED INDIVIDUAL PERMIT.

AUTHORITY: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

SOURCE: 64 FR 11714, Mar. 9, 1999, unless otherwise noted.

EFFECTIVE DATE NOTE: At 64 FR 11714, Mar. 9, 1999, Part 331 was added, effective Aug. 6, 1999.

§ 331.1 Purpose and policy.

(a) *General.* The purpose of this Part is to establish policies and procedures to be used for the administrative appeal of permit applications denied with prejudice, and for the administrative appeals of declined individual permits. The appeal process will allow the affected party to pursue an administrative appeal of certain final Corps of En-

gineers decisions with which they disagree. The basis for an appeal, and the specific policies and procedures of the appeal process, are described in the following sections. It shall be the policy of the Corps of Engineers to promote and maintain an administrative appeal process that is independent, objective, fair, prompt, and efficient.

(b) This administrative appeal process provides only for the appeal of permit denials or declined individual permits.

(c) Permit decisions made by a division engineer or higher authority may be appealed to an Army official at least one level higher than the decision-maker. This higher Army official shall make the decision on the merits of the appeal, and may appoint a qualified individual to act as a review officer (as defined in § 331.2 of this Part). References to the division engineer in this Part shall be understood as also referring to higher-level Army authority when that authority is conducting an administrative appeal.

§ 331.2 Definitions.

The terms and definitions contained in 33 CFR Parts 320 through 330 are applicable to this regulation. In addition, the following terms are defined for the purposes of Part 331:

Affected party means a permit applicant who has received a permit denial, or who has declined a proffered individual permit.

Agent(s) means the affected party's business partner, attorney, consultant, engineer, planner, or any individual with legal authority to represent the appellant's interests.

Appealable action means a permit denial, or a declined individual permit, as these terms are defined below.

Appellant means an affected party who has filed an appeal of a permit denial or declined individual permit under the criteria and procedures of these regulations.

Declined permit means a proffered individual permit, including a letter of permission, that an applicant has refused to accept, because he has objections to the terms and conditions therein. A declined permit can also be an individual permit that the applicant originally accepted, but where such